

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ISAIAH MUHAMMAD, :
: Plaintiff, : 20-CV-8343 (VEC)
: :
: -against- : ORDER ADOPTING
: : REPORT &
C.O. NEWTON, *et al.*, : RECOMMENDATION
: :
: Defendant. :
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VALERIE CAPRONI, United States District Judge:

WHEREAS on October 6, 2020, Plaintiff Isaiah Muhammad, proceeding *pro se*, filed a complaint against the City of New York and four correctional officers at the Manhattan Detention Complex on Rikers Island, alleging that the officers used excessive force against him, Dkt. 2;

WHEREAS on October 9, 2020, the Court referred this case to Magistrate Judge Cott for general pretrial management and for the preparation of reports and recommendations (“R&Rs”) on any dispositive motions, Dkt. 7;

WHEREAS on September 29, 2021 and again on October 15, 2021, Judge Cott ordered Plaintiff to update his address after several Court filings mailed to Plaintiff were returned to the Court as undeliverable, Dkts. 23, 25;

WHEREAS in both orders, Judge Cott advised Plaintiff that failure to update his address would likely result in the dismissal of the case for failure to prosecute, *id.*;

WHEREAS on November 29, 2021, Defendants moved to dismiss the complaint for lack of prosecution, Dkt. 26;

WHEREAS Plaintiff never responded to the motion;

WHEREAS on March 3, 2022, Judge Cott entered an R&R, recommending that Defendants' motion be granted, and Plaintiff's complaint be dismissed without prejudice for failure to prosecute, Dkt. 28;

WHEREAS in the R&R, Judge Cott notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), they had fourteen days to file written objections to the R&R's findings, *id.* at 11;

WHEREAS Judge Cott further noted that failure to file objections would result in both the waiver of objections and the preclusion of appellate review, *id.* at 12;

WHEREAS no objections were filed by either party;

WHEREAS in reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1)(C);

WHEREAS when, as here, no party objects to the R&R, the Court may accept the R&R provided that "there is no clear error on the face of the record," *Heredia v. Doe*, 473 F. Supp. 2d 462, 463 (S.D.N.Y. 2007) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *see also* Fed. R. Civ. P. 72(b) advisory committee's note;

WHEREAS an error is clear when the reviewing court is left with a "definite and firm conviction that a mistake has been committed," *see Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002) (quoting *McAllister v. United States*, 348 U.S. 19, 20 (1954)); and

WHEREAS careful review of the R&R reveals that there is no clear error;

IT IS HEREBY ORDERED that the R&R is adopted in full, Defendants' motion to dismiss is GRANTED, and Plaintiff's complaint is DISMISSED without prejudice.

IT IS FURTHER ORDERED that because the R&R gave the parties adequate warning, *see* R&R, Dkt. 28 at 12, the failure to file any objections to the R&R precludes appellate review of this decision. *See Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”).

IT IS FURTHER ORDERED that because appellate review is precluded, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and, therefore, permission to proceed *in forma pauperis* for purposes of appeal is denied.

The Clerk of Court is respectfully directed to mail a copy of this Order to the address listed on the docket and to note the mailing on the docket. The Clerk is further directed to mail a copy of this Order to Isaiah Muhammad, 1100 West Farms Road, Apt. 2B, Bronx, New York, 10459. The Clerk is further directed to terminate all open motions and to close this case.

SO ORDERED.

Date: April 14, 2022
New York, New York


VALERIE CAPRONI
United States District Judge